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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

IN RE HOLOCAUST VICTIM ASSETS LITIG

Master Docket ~~No,~~
~~96-Civ~~-4843 (ERK)

SUPPLEMENTAL DECLARATION CORRECTING FACTUAL ERRORS IN SWIFT MEMORANDUM OF LAW DATED FEBRUARY 17, 2006

BURT NEUBORNE, an attorney duly admitted to practice before this Court hereby declares under penalty of perjury:

1. On February 28, 2006, I received a copy of a memorandum of law from Mr. Swift riddled with factual inaccuracies.

2. Mr. Swift asserts that I expended 1,600 hours in 2000 on my duties as a law professor at NYU. He is wildly inaccurate. In 2000, I taught three hours of Civil Procedure in the Spring semester (January-April) for 14 weeks. In the Fall semester (September-December), I was on sabbatical leave and had no academic responsibilities. Thus, the real time figures for 2000 are: (a) Swiss Bank case – 1800; (b) German cases – 627; (c) NYU academic (Spring semester) – 150, a total of approximately 2,575 hours, not the ridiculous figure of 4,267 invented by Mr. Swift.

3. Mr.Swift claims that I billed 867 hours on the German cases in 2000. In fact, Mr. Swift had been informed that the figure is 627.

4. Mr. Swift claims that the recovery of $5 million in compound interest should not be deemed to have added value to the settlement fund because it was merely the correction of a mistake I had made in negotiating Amendment 1 to the settlement agreement. Once again, Mr. Swift has the facts completely wrong. I had absolutely nothing to do with the negotiation or drafting of Amendment 1. In fact, Amendment 1

was negotiated in November 1998 by Mr. Swift. See *In re Holocaust Victims Assets Litigation,* 256 F. Supp. 2d 150, 154 (EDNY 2003)(noting that Mr. Swift was one of the draftsmen of Amendment 1).

5. Mr. Swift claims that credit for Congress's decision to enact special legislation exempting the settlement fund from federal income tax goes to Congress, not to the lawyers who lobbied for it. However, the federal tax exemption was the culmination of a year's work in persuading Congress to take the action. *In re Holocaust Victims Assets Litigation,* 270 F. Supp.2d 313 (EDNY) (noting post-settlement work needed to obtain tax exemption). Indeed, under Mr. Swift's reasoning, when a lawyer wins a case, the credit goes to the judge, not to the successful lawyer.

6. Mr. Swift continues to assert incorrectly that because I waived my fees for obtaining the settlement, I am barred from seeking fees for my post-settlement work. He claims that no public notice was given of the distinction between fees for pre and post-settlement work. Mr. Swift simply ignores the January 5, 2001 hearing before the Court, at which he was present, where the Court discusses fees for pre and post-settlement work at length, with specific reference to my post-settlement work.

7. Mr. Swift asserts that many lawyers were willing to take on the post-settlement work *pro bono*. That is simply not true. Mr. Swift was not willing to work *pro bono.* He was not even willing to work on an hourly basis. Instead, he demanded an unjustified risk multiplier of 2.29 for his work and the work of his friends. Mr. Swift's misleading assertion that he notified the Court of his willingness to work *pro bono* after November, 20000 ignores the fact that the offer was made as part of a grossly inflated fee application seeking a risk multiplier of 2.29, and waiving time expended after November 30, 2000, a

figure Mr. Swift assured the Court was *de minimis*. Mr. Swift said absolutely nothing about a willingness to perform the grueling task of post-settlement Lead Settlement Counsel *pro bono*. In fact, the District Court noted that since post-settlement work constituted the bulk of his hourly billings, hourly lodestar was the appropriate means of calculating his fees. *In re Holocaust Victims Assets Litigation,* 270 F. Supp.2d 313 (EDNY).

8. Mr. Swift also mischaracterizes the Court's findings on the availability of *pro bono* representation. In fact, the Court's findings on the availability of *pro bono* counsel dealt solely with pre-settlement *pro bono* work. No one wanted to do the grinding, daily post-settlement work at all, much less do it for nothing. *In re Holocaust Victims Assets Litigation,* 270 F. Supp.2d 313 (EDNY).

9. Finally, Mr. Swift complains that he was not asked to perform post-settlement work. Mr. Swift simply ignores that fact that his sustained opposition to the implementation of the settlement agreement rendered it impossible to consider him as a resource for carrying out the settlement. From the beginning of the implementation process, Mr. Swift has opposed the allocation to the bank account class, insisted upon a larger allocation to the looted assets class, opposed the decision to apply the cy pres doctrine to the looted assets settlement fund, and opposed the painstaking claims processes put in place by the Court. Mr. Swift is, of course, entitled to raise the objections, but it is far more accurate to characterize him counsel for objectors than as a

potential resource for implementing the settlement.

Dated: New York, New York
March 3, 2006

Burt Neuborne

Certificate of Service

I, Richard Kelsey, hereby certify that the persons listed below were served by first-class mail with the Supplemental Declaration Correcting Factual Errors in Swift Memorandum of Law Dated February 17, 2006 on this third Day of March 2006.

Richard Kelsey

Richard Kelsey

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